



BOARD OF APPEALS  
Enid Starr, Co-Chair  
Jesse Geller, Co-Chair  
Robert De Vries

# *Town of Brookline*

## *Massachusetts*

Town Hall, 1<sup>st</sup> Floor  
333 Washington Street  
Brookline, MA 02445-6899  
(617) 730-2010 Fax (617) 730-2043  
Patrick J. Ward, Clerk

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 080055

Petitioners, Thomas Hauser and Bela Bashar, applied to the Building Commissioner for permission to demolish an existing attached two-car garage and construct a new two-car garage with living space above in its place at their home on 17 Baker Circle. The application was denied and an appeal was taken to this Board.

On 8 January 2009, the Board met and determined that the properties affected were those shown on a schedule in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals and fixed 5 February 2009, at 7:00 p.m. in the Selectmen's Hearing Room as the time and place of a hearing on the appeal. Notice of the hearing was mailed to the Petitioner, to his attorney (if any) of record, to the owners of the properties deemed by the Board to be affected as they appeared on the most recent local tax list, to the Planning Board and to all others required by law. Notice of the hearing was published on 1 and 15 January 2009 in the Brookline Tab, a newspaper published in Brookline. Copy of said notice is as follows:

### NOTICE OF HEARING

Pursuant to M.G.L. C. 39, sections 23A & 23B, the Board of Appeals will conduct a public hearing to discuss the following case:

Petitioners: **THOMAS HAUSER and BELA BASHAR**

Location of Premises: **17 BAKER CIRCLE BRKL**

Date of Hearing: **02/05/2009**

Time of Hearing: **7:00 p.m.**

Place of Hearing: **Selectmen's Hearing Room, 6th. floor**

A public hearing will be held for a variance and/or special permit from:

- 1) **5.43, Exceptions to Yard and Setback Regulations, Special Permit Required.**
- 2) **5.70, Rear Yard Requirements, Variance Required** of the Zoning By-Law to remove an existing garage and to construct an addition per plans at **17 BAKER CIRCLE BRKL.**

Said Premise located in a **S-7 (Single Family)** district.

*Hearings, once opened, may be continued by the Chair to a date and time certain. No further notice will be mailed to abutters or advertised in the TAB. Questions regarding whether a hearing has been continued, or the date and time of any hearing may be directed to the Zoning Administrator at 617-734-2134 or check meeting calendar*

*at: <http://calendars.town.brookline.ma.us/MasterTownCalandar/?FormID=158>.*

*The Town of Brookline does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services or activities. Individuals who need auxiliary aids for effective communication in programs and services of the Town of Brookline are invited to make their needs known to the ADA Coordinator, Stephen Bressler, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2330; TDD (617) 730-2327.*

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At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Chairman, Jonathan Book, Mark Allen and Kathryn Ham. Thomas Hauser, the petitioner, presented the case before the Board.

Mr. Hauser described his home at 17 Baker Circle as a two-and-a-half story single-family dwelling located near the center of the lot with an attached two-car garage. The property is similar to those in the rest of the neighborhood in size and placement. Mr. Hauser said that they wish to demolish the existing two-car garage and construct a new two-car garage and living space addition above in its place with nearly the exact footprint. The newer garage would be at a lower elevation than the existing garage, and the grade of the driveway would be lowered approximately 3 feet to meet the new elevation of the



garage floor. The width of the driveway would be increased to 20 feet. The existing retaining walls on either side of the drive would be removed and new concrete walls installed. There will be two finished floors above the garage which will align with the existing first and second floors. On the first floor would be a new family room and a master bedroom on the second floor. The exterior of the addition would match, as closely as possible, the existing structure. Mr. Hauser said he needed relief for the non-conforming rear yard set back.

The Chairman asked whether anyone in attendance wished to speak in favor or against the proposal. No-one rose to speak. Mr. Hauser submitted to the Board a petition in support of the project dated 6 December 2008, signed by twelve neighbors, including the abutters located at 11 and 25 Baker Circle.

Lara Curtis, Senior Planner, provided the findings of the Planning Department:

**Section 5.70 – Rear Yard Requirements**

**Section 8.02.2 – Alteration or Extension:** A special permit is required to alter or extend this non-conforming structure.

	Existing	Proposed	Finding
Rear yard setback	25.7 feet (1 story high)	25.7 feet (2 ½ stories high)	Special permit*

\*Under Section 5.43, *Exceptions to Yard and Setback Regulations*, the Board of Appeals may allow the substitution of other dimensional requirements for yards and setbacks if counterbalancing amenities are provided. The applicant expects to provide additional landscaping as a counterbalancing amenity.

Ms. Curtis said that the Planning Board was not opposed to this proposal for a new side addition to the single family dwelling. The Board was pleased to see that the addition was designed to ensure the rear yard setback remained the same, and the addition does not expand upon the previous garage's footprint. However the Board felt that the driveway should be redesigned so the width of the existing curb cut is not enlarged. They felt that the desired 20 foot width could be accommodated closer to the garage. This would allow for more landscaping in the front yard and keep the driveway narrow at the street while still allowing the driveway to be a usable width where cars would likely be parked. The Board felt that the proposal should not negatively affect the neighboring dwellings; the existing

vegetation along the side lot line effectively screens the addition from neighbors and should be maintained if possible. Therefore, the Planning Board recommended approval of the proposed plans, including the site plan prepared by Jack Hagerman and last dated 12/1/08, and the elevations and floor plans last dated 12/9/08, subject to the following conditions.

- 1. Prior to issuance of a building permit, a final landscaping plan, indicating the location of the driveway and all counterbalancing amenities and site features, shall be submitted to the Assistant Director for Regulatory Planning for review and approval.**
- 2. Prior to issuance of a building permit, final elevations of the addition, indicating exterior materials, shall be submitted to the Assistant Director for Regulatory Planning for review and approval.**
- 3. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan stamped and signed by a registered engineer or land surveyor; 2) final building elevations stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.**

Michael Shepard, Building Commissioner, delivered the comments from the Building Department. He said that the existing dwelling and grounds were very well kept. He said that set-back relief was required because increasing the height of the non-conforming garage effectively increases its non-conformity. Mr. Shepard said that the Building Department was supportive of the project as well as the recommended conditions of the Planning Board.

During deliberations, Kathryn Ham said she was concerned about the preservation of the existing vegetation to the north of the new garage to the extent that the petitioner could control the vegetation. The Board Members discussed amending the Planning Board conditions to require the petitioner to maintain the existing vegetation on the north side of the property. Mr. Hauser responded that the subject trees may actually straddle the lot line. He said that the plan was to preserve them as they are, and that he would not object to a condition that he maintain the existing vegetation of the north side of



his property. Jonathan Book asked about the proposed narrower curb cut and whether it was the same as the existing curb cut and Mr. Hauser responded that it was. There was some discussion amongst the Board Members regarding the width and location of the curb cut. The Board Members discussed amending the Planning Board conditions to require the petitioner to maintain the existing curb-cut. Mr. Hauser responded that he would not object to a condition that he maintain the existing curb-cut.

The Board, having deliberated on this matter and having considered the foregoing testimony, concludes that it is desirable to grant a Special Permit in accordance with Section 5.43, waiver of certain dimensional requirements provided that counterbalancing amenities are provided, and Section 8.02.2, alteration or extension of a pre-existing, non-conforming structure, of the Zoning By-law and makes the following findings pursuant to Section 9.05:

- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will not adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
- e. The development as proposed will not have a significant adverse effect on the supply of housing available for low and moderate income people.

Accordingly, the Board voted unanimously to grant the requested relief subject to the following conditions:

- 1. Prior to issuance of a building permit, a final landscaping plan (including maintenance of the existing vegetation on the north side of the property), indicating the width and location of the driveway with the existing curb-cut and all counterbalancing amenities and site features, shall be submitted to the Assistant Director for Regulatory Planning for review and approval.**
- 2. Prior to issuance of a building permit, final elevations of the addition, indicating exterior materials, shall be submitted to the Assistant Director for Regulatory Planning for review and approval.**

3. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan stamped and signed by a registered engineer or land surveyor; 2) final building elevations stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Unanimous Decision of  
The Board of Appeals



Jonathan E. Book, Chairman

Filing Date: February 17, 2009

A True Copy  
ATTEST:



Patrick J. Ward  
Clerk, Board of Appeals